Remarks

Applicants respectfully request reconsideration of this application as amended. Claim 1 has been amended. No claims have been cancelled. Therefore, claims 1-15 are presented for examination.

In the Office Action, claims 1-15 stand rejected under the judicially created doctrine of double patenting over claims 1-30 of Kullick et al. (U.S. Patent No. 5,764,992) since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. Applicants submit that the double patenting rejection is improper since the claims in the present application are not related to the claims in Kullick.

In determining whether a nonstatutory basis exists for a double patenting rejection , the first question to be asked is: does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent? See MPEP at § 804. An exemplary claim for Kullick is claim 1, which recites:

> A method for automatically updating software programs on a computer, comprising the steps, of:
> storing an updated version of a program at a designated location in a remote memory that is accessible to the computer;
> launching a current version of the program that is stored in memory of the computer, wherein said current version carries out the following steps independent of functions performed by any resource external to said current version:
> detecting whether a version of the program is stored in the designated location;
> determining whether a detected version of the program stored at the designated location is more recent than the current version of the program which is running;
> replacing the current version of the program with a more recent version that is stored at the designated location; and
> subsequently executing the more recent version of the program on the computer.

Meanwhile, claim 1 of the present application recites:

> A method comprising a first network computer (NC) client of a plurality of NC clients causing other of the plurality of NC clients that are booted to receive a second operating system software that is configured differently than a first operating system software by replacing a first set of one or more system volumes maintained at a NC server containing the first operating system software with a second set of one or more system volumes maintained at the NC server containing second operating system software.

Applicants submit that no claim in the present application defines an invention that is an obvious variation of Kullick. However, the Examiner asserts that:

> The subject matter claimed in the instant application is fully disclosed in the patent and is covered in the patent since the patent and the application are claiming common subject matter, as follows: a method for updating software or operating system on server which subsequently updated the client machines on network

See Office Action at page 2.

Applicants disagree with the Examiner's assertion that Kullick and the present application claim common subject matter. Applicants submit that there is no common subject matter between the Kullick claims and the claims of the present application. For example, nowhere in the Kullick claims is there recited a network client, a network server, operating system software, system volumes, or booting of computers. At best, the only relationship between Kullick and the present claims are the field of invention. Therefore, the applicants submit that the present claims are not an obvious variation of the claims in Kullick, and request the double patenting rejection be withdrawn.

Claims 1-15 stand rejected under 35 U.S.C. §103 as being obvious over Kullick et al. (U.S. Patent No. 5,764,992) in view of Craig et al. (U.S. Patent No. 6,266,809 B1). Applicants submit that the present claims are patentable over Kullick in view of Craig.

Kullick discloses a software program running on a computer that automatically replaces itself with a newer version without interruption of its primary function, and in a

manner that is completely transparent to the user of the computer. A logic module that is incorporated into programs achieves this. The logic module performs the functions of locating and identifying other versions of its associated program, determining whether the other versions are older or newer than the currently running version, and replacing older versions of itself with a newer version. As part of this operation, the logic module can copy the newer version to its current location, move the older version to a secondary location, and remove older versions of itself that have been replaced by a newer version. The new version that is to replace an older version can reside on an individual computer, or can be present on a server to which a number of computers are connected via a network. With this arrangement, software upgrades can be effected in an efficient and automatic manner, without resort to any external resources. See Kullick at Abstract.

Craig discloses updating firmware in a network computer by replacing a standard operating system to be loaded at the initialization of the network computer with a firmware update operating system. The firmware update operating system is downloaded to the network computer and initiated to update the firmware of the network computer. The firmware update operating system may be replaced with the standard operating system to be loaded at the initialization of the network computer. The network computer may then be reinitialized by a cold boot so as to load the standard operating system. The cold boot may be server initiated so as to allow for firmware updates with intervention by an operator at the network computer. See Craig at Abstract.

Claim 1 of the present application recites a first network computer (NC) client of a plurality of NC clients causing other of the plurality of NC clients that are booted to receive a second operating system software that is configured differently than a first operating system software. Applicants submit that nowhere in Kullick or Craig is there disclosed a first NC client that can cause other NC clients, upon booting, to receive a second operating system software that is configured differently than a first operating system software. Therefore, since neither Kullick nor Craig disclose or suggest such a limitation, any combination of

Kullick and Craig would also not disclose or suggest a first network computer (NC) client of a plurality of NC clients causing other of the plurality of NC clients that are booted to receive a second operating system software that is configured differently than a first operating system software

Claims 5 and 6 depend from claim 1 and include additional limitations. Therefore, claims 5 and 6 are also patentable over Kullick in view of Craig.

Claim 2 recites a NC client causing a plurality of NC clients that are subsequently booted to utilize a modified operating system by modifying the working copy and replacing the one or more system volumes with the working copy. For the reasons described above with respect to claim 1, claim 2 is also patentable over Kullick in view of Craig.

In addition, claim 2 is patentable over Kullick in view of Craig since neither Kullick nor Craig, or any combination of Kullick and Craig, disclose or suggest a NC client modifying an operating system by modifying a working copy and replacing one or more system volumes with the working copy. Since claims 7 and 8 depend from claim 2 and include additional limitations, claims 7 and 8 are also patentable over Kullick in view of Craig.

Claim 3 recites modifying operating system software supplied by an NC server to subsequently booted NC clients by modifying the working copy and replacing one or more system volumes with the working copy. Thus, for the reasons described above with respect to claim 2, claim 3 is also patentable over Kullick in view of Craig. Because claims 9 and 10 depend from claim 3 and include additional limitations, claims 9 and 10 are also patentable over Kullick in view of Craig.

Claim 11 recites a step for a NC client causing those a plurality of NC clients that are subsequently booted to utilize a modified operating system by modifying a working copy and replacing one or more system volumes with the working copy. Accordingly, for the reasons described above with respect to claim 2, claim 11 is also patentable over Kullick in view of Craig.

Claim 12 recites a network computer (NC) client causing a working copy of one or more system volumes on a NC server to be created by copying the one or more system volumes to a storage area separate from the location of the one or more system volumes, the one or more system volumes containing operating system software that is utilized by each of the plurality of NC clients and a plurality of NC clients that are subsequently booted to utilize a modified operating system by modifying the working copy and replacing one or more system volumes with the working copy. Consequently, for the reasons described above with respect to claim 2, claim 12 is also patentable over Kullick in view of Craig.

Claim 13 recites causing a plurality of network computer (NC) clients that are booted to utilize a modified operating system. Therefore, for the reasons described above with respect to claim 1, claim 13 is also patentable over Kullick in view of Craig.

Claim 14 recites a plurality of NC clients, wherein one of the plurality of NC clients is configured to cause those of the plurality of NC clients that are subsequently booted to receive a second operating system that is configured differently than a first operating system in effect by replacing a first set of one or more system volumes maintained at the NC server containing the first operating system software with a second set of one or more system volumes containing second operating system software operating system that is configured differently that that currently in effect by replacing the one or more system volumes with one or more different system volumes. Therefore, for the reasons described above with respect to claim 2, claim 14 is also patentable over Kullick in view of Craig.

Claim 15 recites a NC client means for causing a plurality of NC clients means that are subsequently booted to receive a second operating system software that is configured differently than a first operating system in effect by replacing a first set of one or more system volume means maintained at the NC server. Thus, for the reasons described above with respect to claim 2, claim 15 is also patentable over Kullick in view of Craig.

Claims 1-15 stand rejected under 35 U.S.C. §103 as being obvious over Lundin et al. (U.S. Patent No. 5,339,430) in view of Craig et al. (U.S. Patent No. 6,266,809 B1). Applicants submit that the present claims are patentable over Lundin in view of Craig.

Lundin discloses that software in telecommunications switching systems may be frequently modified, enhanced or replaced by new versions. The implementation or integration of the new or revised software into the operational system must be accomplished in accordance with strict requirements for not disturbing the ongoing activities of the system. The modification made possible in the system allows changes with minimal disturbance to ongoing activities by dynamically linking and binding software modules during execution. The system accomplishes this by applying expanded object-oriented programming techniques and utilizing language-independent interface specifications that remain unchanged and that obviate the need for storing symbolic information that would be subject to change following modification. See Lundin at Abstract.

Nevertheless, nowhere in Lundin is there disclosed or suggested a first NC client that can cause other NC clients, upon booting, to receive a second operating system software that is configured differently than a first operating system software. Moreover, Lundin does not disclose or suggest a NC client modifying an operating system by modifying a working copy and replacing one or more system volumes with the working copy.

As discussed above Craig does not disclose or suggest a first NC client that can cause other NC clients, upon booting, to receive a second operating system software that is configured differently than a first operating system software, or a NC client modifying an operating system by modifying a working copy and replacing one or more system volumes with the working copy. Therefore, any combination of Lundin and Craig would also not disclose or suggest such limitations. As a result, the present claims are patentable over Lundin in view of Craig.

Applicants respectfully submit that the rejections have been overcome, and that the claims are in condition for allowance. Accordingly, applicants respectfully request the rejections be withdrawn and the claims be allowed.

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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